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MEMO ENDORSED

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August 30, 2023

Via ECF

Hon. Lewis A. Kaplan
United States District Court, SDNY
500 Pearl Street
New York, New York 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8-31-2023

Defendant's request to respond to plaintiff's reply to defendants' 56.1 response is granted. Any such response shall be filed on or before September 7, 2023.

SO ORDERED.

/s/ Lewis A. Kaplan

Lewis A. Kaplan

United States District Court Judge

Dated: August 31, 2023

Re: *Marvel Characters, Inc. v. Patrick S. Ditko*, Case No. 1:21-cv-07957-LAK

Dear Judge Kaplan:

I represent Defendant and Counterclaimant Patrick S. Ditko, as Administrator of the Estate of Stephen J. Ditko ("Defendant") in the above-referenced action. Pursuant to the Court's Individual Rules of Practice, I write respectfully to request that the Court disregard Plaintiff Marvel Characters, Inc.'s ("Marvel" or "Plaintiff") improper Reply to Defendant's Response and Counterstatement to Plaintiff's Rule 56.1 Statement of Material Facts (ECF No. 104) ("Reply to Defendants' 56.1 Response"), or alternatively, if the Court is inclined to consider it, that Defendant be permitted to respond succinctly to it. To avoid burdening the Court with further motion practice, and given the disfavor with which motions to strike 56.1 submissions are viewed, Plaintiff submits this letter for the Court's consideration, but stands ready to submit full motion briefing on this issue if the Court deems it appropriate.

I. Introduction.

Steve Ditko ("Ditko"), who died in 2018, is a celebrated comic book artist and writer, most famous for creating Dr. Strange and co-creating Spider-Man. In 2021, Ditko's Estate exercised his rights under Section 304(c) of the 1976 Copyright Act to recover his joint copyright interest in the stories he co-authored, serving notices of termination of Ditko's express or implied copyright transfers in 1962-1965 to Marvel's predecessor, Magazine Management, when it purchased and published his works. Marvel, a subsidiary of the Walt Disney Company, thereafter initiated the instant litigation in an effort to prevent Ditko's family from reclaiming his joint copyright interest.

On May 19, 2023, Marvel and Defendant filed cross motions for summary judgment (ECF Nos. 67 and 75). In connection with these submissions, both parties filed their respective 56.1 Statements,¹

¹ See Plaintiff's Local Rule 56.1 Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried in Support of Motion by Marvel Characters, Inc. For Summary Judgment ("Pl.'s 56.1 Statement") and Defendant's Local Rule 56.1 Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried in Support of Motion for Summary Judgment by Defendant and Counterclaimant Patrick S. Ditko ("Def.'s 56.1 Statement") (ECF Nos. 69 and 78, respectively).